

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. See Appendix I
Annual CPNI Certification	)	
	)	NAL/Acct. No. See Appendix I
Omnibus Notice of Apparent Liability for Forfeiture	)	
	)	FRN: See Appendix I

**OMNIBUS NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: February 25, 2010**

**Released: February 26, 2010**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Omnibus Notice of Apparent Liability for Forfeiture (“NAL”), we find that the companies listed in Appendix I of this Order (“the Companies”), by failing to submit an annual customer proprietary network information (“CPNI”) compliance certificate, have apparently willfully or repeatedly violated section 64.2009(e) of the Commission’s rules.<sup>1</sup> Protection of CPNI is a fundamental obligation of all telecommunications carriers, as provided by section 222 of the Act. Based upon our review of the facts and circumstances surrounding these apparent violations, we find that the Companies are each apparently liable for a monetary forfeiture in the amount of twenty five thousand dollars (\$25,000).

**II. BACKGROUND**

2. Section 222 of the Act imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers’ proprietary information.<sup>2</sup> The Commission has issued rules implementing section 222.<sup>3</sup> For instance, the Commission requires carriers to establish and maintain systems designed to ensure that they adequately protect their subscribers’ CPNI.<sup>4</sup> Moreover, 47 C.F.R. § 64.2009(e) requires that all companies subject to the CPNI rules file with the Commission annually, on or

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<sup>1</sup> 47 C.F.R. § 64.2009(e).

<sup>2</sup> Section 222 of the Communications Act, 47 U.S.C § 222, provides that: “Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.”

<sup>3</sup> 47 C.F.R. § 64.2001-2011.

<sup>4</sup> For purposes of the CPNI rules, the term “telecommunications carrier” includes an entity that provides interconnected VoIP service. 47 C.F.R. § 64.2003(o).

before March 1, a certification of their compliance with the CPNI rules.<sup>5</sup>

### III. DISCUSSION

3. The Companies have apparently violated rule 64.2009(e) by failing to file the required compliance certifications for the 2008 calendar year. The Bureau sent Letters of Inquiry to the Companies asking them to provide copies and evidence of their annual CPNI certification filings.<sup>6</sup> Each of the Companies failed to submit evidence that it submitted a certification.

4. Protection of subscribers' proprietary information is an important carrier obligation. Consumers are understandably concerned about the security of the sensitive, personal data that they must entrust to their various service providers, whether they are financial institutions or telephone companies. We must take aggressive, substantial steps to ensure that carriers implement necessary and adequate measures to protect their subscribers' CPNI, as required by the Commission's CPNI rules.

5. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>7</sup> The Commission may assess this penalty if it determines that the carrier's noncompliance is "willful or repeated."<sup>8</sup> For a violation to be willful, it need not be intentional.<sup>9</sup> It appears here that the Companies' failures to file were both willful and repeated, inasmuch as each of them was found by the Bureau to have violated rule 64.2009(e) in the past.<sup>10</sup> In exercising our forfeiture

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<sup>5</sup> See 47 C.F.R. § 64.2009(e). See also Enforcement Advisory No. 2010-01, DA 10-91, (rel. January 15, 2010).

<sup>6</sup> See Appendix I.

<sup>7</sup> Section 503(b)(2)(B) provides for forfeitures against common carriers of up to \$150,000 for each violation or each day of a continuing violation up to a maximum of \$1,500,000 for each continuing violation. 47 U.S.C. § 503(b)(2)(B). See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (increasing maximum forfeiture amounts to account for inflation). See also FCC Enforcement Advisory, DA 10-91 (rel. January 15, 2010).

<sup>8</sup> 47 U.S.C. § 503(b)(1)(B) (the Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act); see also 47 U.S.C. § 503(b)(4)(A) (providing that the Commission must assess such penalties through the use of a written notice of apparent liability or notice of opportunity for hearing).

<sup>9</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>10</sup> Each of the Companies was previously issued a citation or admonishment for violating rule 64.2009(e) by filing certifications that did not satisfy the requirements of that rule. See Admonishment Letter from Marcy Green, Deputy Chief, Telecommunications Consumers Division to Advanza Telecom, Inc., dated Mar. 5, 2009; Admonishment Letter from Marcy Green, Deputy Chief, Telecommunications Consumers Division to Crossfire Telecommunications, LLC, dated Mar. 5, 2009; Admonishment Letter from Marcy Green, Deputy Chief, Telecommunications Consumers Division to Dezco Communications, Inc., dated Mar. 5, 2009; Admonishment Letter from Marcy Green, Deputy Chief, Telecommunications Consumers Division to G-Link Communications, Inc., dated Mar. 5, 2009; Admonishment Letter from Marcy Green, Deputy Chief, Telecommunications Consumers Division to NTS Services Corp., dated Mar. 5, 2009; Admonishment Letter from Marcy Green, Deputy Chief, Telecommunications Consumers Division to Systema Networks, Inc., dated Mar. 5, 2009. See also Citation Letter from Marcy Green, Deputy Chief, Telecommunications Consumers Division to Starlight International Inc. dba Bright Star Telecom, Legal Department, dated Feb. 26, 2009.

(continued....)

authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>11</sup> In addition, the Commission has established guidelines for forfeiture amounts and, where there is no specific base amount for a violation, retained discretion to set an amount on a case-by-case basis.<sup>12</sup>

6. For the annual CPNI certifications for calendar year 2007, the Bureau issued NALs in the amount of \$20,000 against the carriers that failed to file.<sup>13</sup> As noted above, however, the Companies identified in this order, have repeatedly violated rule 64.2009(e). This repeated failure to comply, even after the Companies were explicitly warned of the potential consequences via the citations and admonishments, warrants an upward adjustment of the forfeiture amount.<sup>14</sup> Accordingly, we propose a forfeiture of \$25,000 against each of the Companies for the failure to comply with the annual CPNI certification filing requirement of section 64.2009(e).

7. The Companies will have the opportunity to submit further evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.<sup>15</sup> For example, any of the Companies may present evidence that it has compelling, financial arguments to reduce the proposed forfeiture or that it has maintained a history of overall compliance.<sup>16</sup> The Commission will fully consider any such arguments made by any of the Companies in its response to this NAL.

#### IV. CONCLUSION AND ORDERING CLAUSES

8. We have determined that the Companies set forth in Appendix I of this Order, by failing to submit an annual compliance certificate, have apparently willfully or repeatedly violated section 64.2009(e) of the Commission’s rules. We find each of the Companies apparently liable for a forfeiture of twenty five thousand dollars (\$25,000).

9. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Act,<sup>17</sup> section 1.80(f)(4) of the Commission’s rules,<sup>18</sup> and authority delegated by sections 0.111 and 0.311 of the Commission’s rules,<sup>19</sup> each of the Companies listed in Appendix I of this Order are hereby LIABLE FOR A MONETARY FORFEITURE in the amount of twenty five thousand dollars (\$25,000) each for willfully or repeatedly violating section 64.2009(e) of the Commission’s rules by failing to submit annual (Continued from previous page) \_\_\_\_\_

<sup>10</sup> See 47 C.F.R. § 108(b)(4).

<sup>11</sup> See 47 U.S.C. § 503(b)(2)(D); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”); *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>12</sup> *Forfeiture Policy Statement*, 12 FCC Rcd 17098-99, ¶ 22.

<sup>13</sup> *Annual CPNI Certification, Omnibus Notice of Apparent Liability for Forfeiture*, 24 FCC Rcd 2299 (Enf. Bur. 2009).

<sup>14</sup> See 47 C.F.R. § 108(b)(4).

<sup>15</sup> 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>16</sup> 47 C.F.R. § 1.80(b)(4) (discussing factors the Commission or its designee will consider in deciding appropriate forfeiture amount).

<sup>17</sup> 47 U.S.C. § 503(b).

<sup>18</sup> 47 U.S.C. § 1.80(f)(4).

<sup>19</sup> 47 C.F.R. §§ 0.111, 0.311.

compliance certificates.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,<sup>20</sup> within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, each of the Companies listed in Appendix I of this Order SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in Attachment I. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). The Companies will also send electronic notification on the date said payment is made to johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

12. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and to Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in Attachment I.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class Mail to the Companies' addresses of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>20</sup> 47 C.F.R. § 1.80.

## APPENDIX

Company Name	DBA	EB File Number	FRN	NAL Acct Number
Advanza Telecom, Inc.		EB-08-TC-2890	0017029141	200932170194
Crossfire Telecommunications, LLC		EB-09-TC-081	0016530925	200932170040
Dezco Communications, Inc.		EB-09-TC-087	0012244745	200932170046
G-Link Communications, Inc.		EB-09-TC-102	0016937807	200932170061
NTS Services Corp.		EB-08-TC-4738	0012796355	200932170591
Starlight International Inc.	Bright Star Telecom	EB-08-TC-5443	0014431811	200932170769
Systema Networks, Inc.		EB-09-TC-162	0017616053	200932170121